

Federal Communications Commission

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Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 93-298

In re Application of

David Lee Communications, Inc.

For Renewal of License of BR-890602UJ
Station WTRX(AM),
Flint, Michigan

HEARING DESIGNATION ORDER

Adopted: November 12, 1993; Released: November 30, 1993

By the Chief, Audio Services Division:

1. The Chief, Audio Services Division, Mass Media Bureau, has before him: (a) the captioned application for renewal of license filed by David Lee Communications, Inc., (Lee) licensee of WTRX(AM), Flint, Michigan; and, (b) the results of an investigation into WTRX(AM)'s silent status.¹

2. The Commission's records indicate that WTRX(AM) has been silent since August 20, 1990. The station's authority to remain silent expired on April 29, 1993. The current renewal of license application for WTRX(AM) has not been acted upon because of the station's silent status.²

3. The licensee's last request for authority to remain silent was granted by letter dated January 29, 1993, from the Chief, AM Branch, Audio Services Division, Mass Media Bureau. In that letter, Lee was advised that any future requests for authority to remain silent must be accompanied by a detailed summary of steps being taken to return WTRX(AM) to on-air operations. By letter dated April 13, 1993, Lee requested a further extension of its

authority to remain silent. In that letter, Lee noted that it was currently negotiating with several investors in an effort to return the station to the air.

4. By letter of April 30, 1993, the Chief, AM Branch advised Lee that its showing with respect to the steps taken to return WTRX(AM) to the air was not sufficient. Lee was requested to provide a detailed explanation of the specific steps it has taken to return the station to the air, including, but not limited to, "a marketing plan, proof of listing with a broker, a list of prospective investors or buyers contacted and all other positive efforts made to sell the station." By letter of June 3, 1993, Lee responded that it has discussed the sale of WTRX(AM) with no less than fifteen different parties over the last twelve months, with no offers, and that it is currently in the process of negotiating a merger with a local station which would result in putting the station back on the air "in a relatively short period of time." Lee also included a copy of a commitment letter from the Republic Bank of Flint, Michigan for a \$300,000 loan to the radio station.

5. The bank letter gives approval of a commercial loan to refinance the building located at 3076 E. Bristol Road. It states that the loan proceeds will be used to pay off an existing mortgage and it does not indicate that Lee would receive any funds from the refinancing. Furthermore, no application proposing the assignment of the WTRX(AM) license has been filed with the Commission. WTRX(AM) has not demonstrated that causes beyond its control prevent it from resuming broadcasting. This fact, coupled with the fact that WTRX(AM) has been off the air for over three years, supports our determination that Lee is in apparent violation of Sections 73.1740(a)(4) (Minimum Operating Schedule) and 73.1750 (Discontinuance of Operation) of the Commission's Rules.³ We believe that the evidence before us is sufficient to raise a substantial and material question of fact regarding Lee's capability and intent to resume the broadcast operations of WTRX(AM). We will therefore designate the WTRX(AM) renewal of license application for an evidentiary hearing on appropriate issues specified below.

6. Accordingly, **IT IS ORDERED**, That, pursuant to Section 309(e) of the Communications Act of 1934, as amended, 47 U.S.C. Sec. 309(e), the renewal of license applications of Station WTRX(AM), Flint, Michigan, **IS DESIGNATED FOR HEARING** at a time and place to be specified in a subsequent Order, upon the following issues:

¹ The Mass Media Bureau has been delegated authority to designate for hearing the renewal of license applications of silent broadcast stations. See *Moenkopi Communications, Inc.*, 8 FCC Rcd 3990 (1993).

² It is the Commission's general policy to defer action on a station's renewal of license application while that station is silent.

³ Section 73.1740(a)(4) provides:

"In the event that causes beyond the control of a licensee make it impossible to adhere to the operating schedule of this section or to continue operating, the station may limit or discontinue operation for a period of not more than 30 days without further authority from the FCC. Notification must be sent to the FCC in Washington, D.C. not later than the 10th day of limited or discontinued operation. During such period, the licensee shall continue to adhere to the requirements in the station

license pertaining to the lighting of antenna structures. In the event normal operation is restored prior to the expiration of the 30 day period, the licensee will so notify the FCC of this date. If the causes beyond the control of the licensee make it impossible to comply within the allowed period, informal written request shall be made to the FCC no later than the 30th day for such additional time as may be deemed necessary."

Section 73.1750 provides:

"The licensee of each station shall notify the FCC in Washington, D.C. of permanent discontinuance of operation at least two days before operation is discontinued. Immediately after discontinuance of operation, the licensee shall forward the station license and other instruments of authorization to the FCC, Washington, D.C. for cancellation."

(a) To determine whether David Lee Communications, Inc. has the capability and intent to expeditiously resume broadcast operations of WTRX(AM) consistent with the Commission's Rules.

(b) To determine whether David Lee Communications, Inc. has violated Sections 73.1740 and/or 73.1750 of the Commission's Rules.

(c) To determine, in light of the evidence adduced pursuant to the preceding issues, whether grant of the subject renewal of license application would serve the public interest, convenience and necessity.

FEDERAL COMMUNICATIONS COMMISSION

Larry D. Eads, Chief
Audio Services Division
Mass Media Bureau

7. IT IS FURTHER ORDERED, That, in the event it is determined that grant of the renewal of license application would serve the public interest, convenience and necessity, the grant will be conditioned on the expeditious resumption of operation, the precise period of time to be established in the hearing. Failure to resume operations within the time specified in the condition will result in the cancellation of the license and the deletion of the station's call letters.

8. IT IS FURTHER ORDERED, That, in accordance with Section 309(e) of the Communications Act of 1934, as amended, both the BURDEN OF PROCEEDING with the introduction of evidence and the BURDEN OF PROOF with respect to the issues specified above shall be upon the LICENSEE, David Lee Communications, Inc.

9. IT IS FURTHER ORDERED, That, to avail itself of the opportunity to be heard, the licensee, pursuant to Section 1.221(c) of the Commission's Rules, SHALL FILE with the Commission, in person or by attorney, within twenty (20) days of the mailing of this Order, in triplicate, a written appearance stating an intention to appear on the date fixed for hearing and to present evidence on the issues specified in this Order.

10. IT IS FURTHER ORDERED, That the licensee herein shall, pursuant to Section 311(a)(2) of the Communications Act of 1934, as amended, and Section 73.3594 of the Commission's Rules, give notice of the hearing within the time and in the manner prescribed in such Rules, and shall advise the Commission of the publication of such notice as required by Section 73.3594(g) of the Rules.

11. IT IS FURTHER ORDERED, That, if it is determined that the hearing record does not warrant an Order denying the renewal of license application of WTRX(AM), Flint, Michigan, it shall be determined, pursuant to Section 503(b) of the Communications Act of 1934, as amended, whether an ORDER OF FORFEITURE shall be issued against the licensee in an amount not exceeding \$250,000 for the willful and/or repeated violation of Section 73.1740 and/or 73.1750 of the Commission's Rules.

12. IT IS FURTHER ORDERED, That, in connection with the possible forfeiture liability noted above, this document constitutes notice pursuant to Section 503(b)(3) of the Communications Act of 1934, as amended. The Commission has determined that, in every case designated for hearing involving revocation or denial of assignment, transfer, or renewal of license for alleged violations which also come within the purview of Section 503(b) of the Communications Act of 1934, as amended, it shall, as a matter of course, include this forfeiture notice so as to maintain the fullest possible flexibility of action. Accordingly, we stress that the inclusion of this notice is not to be taken as in any way indicating what the initial or final disposition of this case should be.